VS.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JEFFERY KANALLY, ) 3:07-cv-00115-HDM-RAM ) Plaintiff, ) ORDER

BILL DONAT, et al.,

Defendants.

The court has considered the report and recommendation of the United States Magistrate Judge (#20) dated July 2, 2008, in which the Magistrate Judge recommends that this court grant defendants' motion for summary judgment (#12) and deny plaintiff's cross-motion for summary judgment (#16). Plaintiff opposed defendants' motion (#16), and defendants replied (#18). Defendants also opposed plaintiff's cross-motion (#18), but plaintiff did not file a reply. No objections to the report and recommendation have been filed, and the time for filing any objections has expired.

The court has considered the pleadings and memoranda of the parties and other relevant matters of record and has made a review and determination in accordance with the requirements of 28 U.S.C.

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§ 636 and applicable case law, and good cause appearing, the court hereby

ADOPTS AND ACCEPTS the report and recommendation of the United States Magistrate Judge (#20) that this court grant the defendants' motion for summary judgment on Counts I and II and dismiss without prejudice Count III for failure to exhaust administrative remedies. Accordingly, defendants' motion for summary judgment as to Counts I and II is GRANTED, Count III is dismissed without prejudice, and this action is hereby DISMISSED. The clerk of the court shall enter judgment accordingly.

Howard DMEKiller

UNITED STATES DISTRICT JUDGE

## IT IS SO ORDERED.

DATED: This 4th day of August, 2008.